IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7954 of 1997

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HALVAD MUNICIPALITY

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7954 of 1997

MR JD AJMERA for Petitioner

MR KT DAVE, AGP for Respondent No. 1

MR RAVINDRA SHAH for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 13/02/2002

ORAL JUDGEMENT

#. Heard the learned advocates.

#. The petitioner before this Court is the Halvad Municipality (hereinafter referred to as 'the Municipality'). The Municipality challenges the order dated 2nd January, 1997 made by the State Government in its Urban Development and Urban Housing Department in Revision Application No.53/96. The facts leading to the present petition are as under :

The dispute pertains to the land admeasuring 411.25 sq.mtrs. situated at Halvad. The respondent no.2 herein is a public charitable trust (hereinafter referred to as 'the Trust'). The Trust had, on 1st March, 1983, made demand for the said land for the purpose of constructing a gymnasium. The State Government in its Revenue Department, under communication dated 5th January, 1984, accepted the proposal made by the District Panchayat, Surendranagar to grant the said land to the Trust by conditional sale. Accordingly, the said land had been granted to the Trust on 20th March, 1984, on condition, inter alia, that the said land shall be used for the purpose of gymnasium alone.

#. It appears that the said land was not utilized by the Trust for the purpose for which it was granted. However, in the year 1990, the Trust started to use the said land for commercial purpose i.e. the Trust started laying foundation for construction of shops. Since then, the District Panchayat appears to have taken the grant made in favour of the Trust in suo motu revision. A proposal for resumption of the said land to the State Government appears to have been made to the State Government in its Revenue Department. The State Government in its Revenue Department, under communication dated 27th December, 1992, directed the District Panchayat to resume the land to the State Government. Pursuant to the said communication, the District Panchayat, under its order dated 25th February, 1993, cancelled the grant made in favour of the Trust and resumed the land to the State Government. Feeling aggrieved, the Trust preferred Revision Application before the Development Commissioner, which was not entertained for want of jurisdiction. Since then, the Trust preferred the Revision Application No.53/96 before the State Government in its Urban Development and Urban Housing Department. In course of hearing, the Trust assured the Government that it shall not use the said land for any purpose other than for the gymnasium. On such assurance being given by the Trust, the State Government, under its order dated 2nd January, 1997, allowed the said Revision Application and set aside the order dated 25th February, 1993 of the District

Panchayat, Surendranagar. Feeling aggrieved, the Municipality has preferred the present petition.

#. Mr.Ajmera has submitted that the impugned order has been made by the State Government without the authority of law i.e. the order of the District Panchayat dated 25th February, 1993 was made pursuant to the direction issued by the State Government. For all practical purposes, the said order was made by the State Government and no revision would lie against the order of the State Government. The impugned order, therefore, suffers from the vice of inherent lack of jurisdiction and requires to be quashed and set aside. He has further submitted that the said land is situated adjacent to the office of the Municipality and the Municipality required the said land for construction of a building to house the office of the Municipality. He has also submitted that the Trust has been offered other pieces of lands having the same area. However, the Trust has not accepted the said offer.

#. The petition is contested by the Trust through the learned advocate Mr.Shah. Mr.Shah has submitted that the Municipality has no locus standi. He has submitted that the Municipality was not a party to the proceedings before the authorities below. Besides, there has never been a demand raised by the Municipality. The said land belongs to the State Government and the State Government had granted the same to the Trust. The Municipality, therefore, has no locus standi to challenge the impugned order of the State Government. He has further submitted that the order of the District Panchayat dated 25th February, 1993 was made in contravention of the principle of natural justice, inasmuch as, the said order was made ex parte without affording an opportunity to the Trust to show cause or of being heard. The said order of the District Panchayat, therefore, was not sustainable. It was, therefore, rightly set aside by the State Government under the impugned order dated 2nd January, 1997.

#. I am of the view that both the learned advocates Mr.Ajmera and Mr.Shah are right in their submission. The order dated 3rd March, 1993 of the District Panchayat, Surendranagar has, ex facie, been made without affording opportunity of hearing to the Trust. The said order being ex parte is not sustainable. Similarly, the State Government in its Urban Development and Urban Housing Department could not have set in appeal over the decision of State Government in its Revenue Department and set aside the same. Both the orders are, therefore, inherently wrong and require to be set aside.

Ordinarily, in the facts of the case, the impugned order dated 2nd January, 1997 of the State Government would have been set aside. In the circumstance, the respondent no.1 would once again be relegated to challenge the order dated 25th February, 1993 of the District Panchayat, Surendranagar, which is, as recorded hereinabove, ex facie bad and illegal. Hence, the interest of justice requires that the said order also be set aside.

#. In the result, the petition is allowed. The impugned order dated 2nd January, 1997 of the State Government in its Urban Development and Urban Housing Department made in Revision Application No.53/96 (Annexure-'D' to the petition) is quashed and set aside. The order of the District Development Officer dated 25th February, 1993 communicated on 3rd March, 1993 is also quashed and set aside. If at all the Municipality requires the said land for construction of its office, it may, within four weeks from today, make a demand for the same before the concerned authority. If, such a demand is made, the concerned authority shall consider the same after hearing the Trust. In that case, the Trust may be offered an alternative piece of land in exchange of the land in question.

#. It is clarified that, if the Trust has to be offered some other piece of land, such other land shall be granted to the petitioner at the price prevalent on the date of the original grant i.e. 20th March, 1984. In case the Municipality does not make any demand for the said land, the Trust shall be at liberty to utilize the said land for the purpose for which it has been granted to it i.e. for the purpose of gymnasium. In no circumstances, the Trust shall utilize the said land for any purpose other than the one for which it was granted.

#. It is undisputed that the possession of the said land is with the Municipality. It is, therefore, directed that the Municipality shall maintain status quo as regards the possession and the user of the said land for a period of four weeks from today. In the event, the Municipality demands the said land, it shall continue to maintain status quo till such demand is considered and the order is made by the concerned authority. In case the Municipality does not make the demand as aforesaid within four weeks from today, or the demand that may be made by the Municipality hereafter is rejected by the concerned authority, it shall handover the vacant possession of the said land to the Trust within two weeks therefrom.

##. Rule is made absolute in the above terms. There shall be no order as to cost.

(Ms. R.M.Doshit, J.)
/sakkaf